

The order here was issued on November 4, 2002. The Motion to Reconsider was filed on May 14, 2004. Clearly more than one year has passed. Therefore, the Motion to Reconsider shall be denied and the remaining issues are to be determined in accordance with the November 4, 2002 decision.

The previous order determined that Defendant Chrysler was responsible to provide liability coverage to Defendant Wallace and that the UM/UIM coverage was not triggered because sufficient liability coverage was available. (Order, November 4, 2002, p. 8-9). However, since that Order, Defendant Chrysler has denied liability coverage based upon the consent to and release of the tortfeasor and the concomitant inability of Defendant Wallace to bring a direct action against the insurer for the liability coverage. *See Chitlik v. Allstate Ins. Co.*, 43 Ohio App. 2d 193, 197 (Ohio App. 1973). Pursuant to the language of the Chrysler policy, this denial of liability coverage triggers the UM/UIM coverage of the Chrysler policies. *See State Farm Auto Ins. Co. v. Alexander*, 62 Ohio St. 3d 397 (Ohio 1992). The consent to the settlement estopped Chrysler from denying the UM/UIM motorist coverage.

Therefore, the court being advised,

IT IS ORDERED as follows:

1. That the court **grants in part and denies in part** Defendant Chrysler's Motion for Summary Judgment (Doc. # 53) and **grants in part and denies in part** Defendant Wallace's Motion for Reconsideration and Motion for Summary Judgment. (Doc. # 59), as outlined above;
2. That a final pretrial conference will be held in this matter on **Friday, May 27, 2005 at 2:00 p.m.** in Room 505, United States Courthouse, in Covington, Kentucky. The parties are directed to comply with the standard final pretrial order entered concurrently herewith; and

3. That trial by jury will commence on **Monday, June 20, 2005 at 10:00 a.m.** in the Courtroom "A," United States Courthouse in Covington, Kentucky.

This 9th day of February, 2005.



Signed By:

William O. Bertelsman *WOB*

United States District Judge